

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

UNITED STATES OF AMERICA,

Civil Action No.

Plaintiff,

v.

CHEMICAL WASTE MANAGEMENT,
INC.,

Defendant.

COMPLAINT

The United States of America, through the undersigned counsel, by the authority of the Attorney General of the United States of America, for and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought against Chemical Waste Management, Inc. (the "Defendant") under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9607(a), for the recovery of past costs incurred by the United States in response to releases or threatened releases of hazardous substances on, at, and from the Weld County Disposal Facility, 4982 Weld County Road 35, Weld County, Colorado (the "Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action and the parties hereto, pursuant to Section

113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) - (c), and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the releases or threatened releases of hazardous substances that give rise to the United States' claims in this action occurred in this judicial district and because Defendant has engaged in the conduct of its business in this judicial district.

DEFENDANT

4. Defendant, Chemical Waste Management, Inc. (hereafter "CWM") is a corporation organized under the laws of the State of Delaware.

5. In approximately December 1980, CWM merged with Waste Transport Company (hereafter "WTC"), a corporation organized under the laws of the State of Colorado. WTC owned and operated a company which, among other things, accepted wastes from individuals and business for transport to locations at which those wastes were disposed.

GENERAL FACTUAL ALLEGATIONS

6. Articles of Merger between CWM and WTC were filed with the State of Colorado in December 1980. Under these Articles of Merger, among other things, WTC merged into CWM, all shares of WTC were canceled, and CWM was designated as the surviving corporation.

7. By operation of Colorado statutes, as WTC's statutory successor, CWM is responsible for any liability for the Site which may be attributable to WTC under Sections 107(a) and 113(g)(s) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2).

8. WTC and CWM are "person[s]" as that term is defined in Section 101(21) of

CERCLA, 42 U.S.C. § 9601(21).

9. The Weld County Disposal Facility, which was built in the late 1970s, was issued a special use permit by Weld County to receive oil field brines and other petroleum-related liquid wastes derived from oil and gas exploration and production activities.

10. Prior to its closure in May 1995, oil field brines and other non-hazardous, petroleum-related liquid wastes received by the Weld County Disposal were processed through a concrete receiving sump and placed into evaporative ponds.

11. From approximately 1977 to 1978, WTC accepted wastes for transport and disposal from, among others: American Industrial; Asamera Oil (U.S.), Inc.; Arapahoe Chemical, Inc.; Ball Metal Container; Borg Warner Corporation; City of South Lakewood Sanitation; Claude A. Akridge d/b/a University Hills Conoco; COBE Laboratories, Inc. (n/k/a Gambro, Inc.); Colorado and Southern Railroad Company; Coors Brewing Company; Coors Ceramics Company; Coors Porcelain Company, Inc.; Denver Regional Transportation District; Frontier Airlines; Gardner-Denver Corp.; General Iron Works; International Business Machines; Johns Manville Corporation; Kwal Paints Inc; Marathon Oil Company; National Cash Register; National Molasses Company; Power Motive; Ryder Truck Rental; Safeway, Inc.; Samsonite; SASHCO, Inc.; Shattuck Chemical Co., Inc.; Stonehouse Signs, Inc.; Sundstrand Aviation Unit; Tomahawk Watkins (n/k/a Alpine Diesel); TOSCO Corporation; U.S. Geological Survey; Weaver Electric; and Wyoming Minerals Corporation Company.

12. WTC selected the Weld County Disposal Facility as the location for the disposal of approximately 1,552,849 gallons of waste WTC accepted for transport from the parties identified in Paragraph 11, supra. The parties identified in Paragraph 11 did not select the Weld County

Disposal Facility as the location for disposal of their hazardous substances.

13. The waste streams WTC accepted for transport from the parties identified in Paragraph 11, supra, contained, among other things, acetone, toluene, perchloroethylene, trichloroethylene, and vinyl chloride.

14. Acetone, toluene, perchloroethylene, trichloroethylene, and vinyl chloride are hazardous substances, as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

15. The hazardous substances WTC accepted for transport from the parties identified in Paragraph 11, supra, were placed by WTC in a pond at Weld County Disposal Facility. Subsequently, hazardous substances were released from that pond into soils and ground water beneath the Site.

16. Sections 104(a) - (b), and 107 of CERCLA , 42 U.S.C. §§ 9604(a) - (b), and 9607, authorize the President to take the necessary response action to determine the existence and extent of releases or threatened releases of hazardous substances, pollutants, or contaminants; to take action to remove or remedy such releases in order to protect public health and the environment; and to recover the costs of these actions. CERCLA further authorizes the President to expend monies to undertake planning, legal, economic, engineering, health, and other studies or investigations to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of CERCLA. The President delegated his authority under Sections 104(a) - (b) and 107 of CERCLA, 42 U.S.C. § 9604(a) - (b) and 9607, to the Administrator of U.S. EPA. The Administrator of U.S. EPA re-delegated this authority to the Regional Administrator of U.S. EPA for Region 8. This authority was further re-delegated to the Assistant Regional

Administrator of the Office of Enforcement, Compliance, and Environmental Justice for Region

8.

17. In 1995, EPA issued a RCRA 7003 Administrative Order to the owner/operator of the Weld County Disposal Facility and to two generators who had shipped hazardous wastes to that facility, Amoco and HS Resources, Inc. Between August 1997 and November 1998 Amoco and HS Resources, Inc. implemented the clean up of oil field wastes required under EPA's 1995 Administrative Order.

18. On September 25, 1998, EPA issued an Action Memorandum and initiated a CERCLA time-critical Removal Action at the Site to address hazardous substance released from the pond used by WTC at the Weld County Disposal Facility. Halogenated organics were discovered in soils in the vicinity of that pond and were discovered in a plume of groundwater emanating from that pond and extending 3/4 of a mile downgradient of the Pond. On September 24, 1999, EPA issued an amendment to the original Action Memorandum, which modified the Statement of Work and identified an alternative remedy for both soils and ground water that would be more feasible and cost effective for the Site.

19. As of July 31, 2005, the United States has incurred response costs of approximately \$5,270,323 as a result of the performance of response actions necessary to address the releases or threatened releases of hazardous substances at and from the Site. To date, through administrative settlements, the United States has recovered approximately \$2,710,542 in response costs from the parties identified in Paragraph 11, supra, leaving approximately \$2,559,781 in response costs unrecovered. Such costs incurred to date by the United States have been incurred in a manner

not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. 42 U.S.C. § 9607(a)(4)(A).

20. The United States may continue to incur costs in its efforts to respond to releases or threatened releases of hazardous substances at and from the Site.

FIRST CLAIM FOR RELIEF

21. The allegations contained in paragraphs 1 - 20 are re-alleged and incorporated herein by reference.

22. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, *inter alia*, that:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section . . .

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

. . .

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

23. Acetone, toluene, perchloroethylene, trichloroethylene, and vinyl chloride are "hazardous substance[s]," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. The Weld County Disposal Facility is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. There have been and continue to be “release[s],” within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or threatened releases of hazardous substances at or from the Site.

26. As the statutory successor to WTC, Defendant CWM is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) to the same degree and extent that WTC is liable for its actions at the Weld County Disposal Facility.

27. WTC, and by operation of statute, CWM are liable under Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4), as a person “who . . . accepted any hazardous substances for transport to disposal . . . facilities . . . selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs.”

28. The actions taken by the United States in connection with the Site constitute “response” actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

29. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable for “all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan [40 C.F.R. Part 300].” 42 U.S.C. § 9607(a)(4)(A).

30. The United States has incurred unrecovered response costs at the Site. These costs were incurred by the United States in connection with the performance of the response actions at the Site selected in EPA’s September 25, 1998 Action Memorandum as modified by the September 24, 1999 amendment. Unrecovered response costs also include enforcement costs

incurred and to be incurred in connection with the United States' efforts to recover its response costs from other liable parties at the Site and prejudgment interest, as provided for by Section 107 of CERCLA, 42 U.S.C. § 9607.

31. The response actions taken by EPA and its contractors with respect to the Site, and the costs incurred in connection with those response actions, are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, United States of America, prays that this Court:

A. Enter judgment pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in favor of the United States and against Defendant for all response costs the United States has incurred in connection with response actions relating to the Site, including prejudgment interest on those sums;

B. Award the United States its costs and expenses for this action; and

C. Grant such other and further relief as the Court deems just and proper.

Dated this ____ day of _____, 2005.

Respectfully submitted,

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